STATE OF MICHIGAN

COURT OF APPEALS

COLONIAL WOODS LIMITED DIVIDEND HOUSING ASSOCIATION,

Petitioner-Appellant,

v

CITY OF LANSING,

Respondent-Appellee.

UNPUBLISHED
June 12, 2003

No. 239199
Michigan Tax Tribunal
LC No. 00-283155

Before: Sawyer, P.J., and Meter and Schuette, JJ.

PER CURIAM.

Petitioner appeals as of right the order of the Michigan Tax Tribunal (MTT) dismissing its petition for relief. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Petitioner, a limited partnership, owns a parcel of property located within respondent's boundaries. The property was classified as commercial property for the tax year 1998. On the tax date for 1998, apartment units designated for persons of low and moderate incomes were under construction on the property. Previously, petitioner requested that respondent adopt an ordinance allowing petitioner to pay an annual service charge for public services in lieu of property taxes. MCL 125.1415(a). In July 1995 respondent adopted an ordinance that established and approved a formula for payment in lieu of taxes (PILOT), and authorized petitioner to pay a service charge of four percent of the difference between collected rents and billed utilities. In 1997 petitioner notified respondent that the housing project met the requirements of the ordinance and was eligible for PILOT treatment; however, respondent failed to remove the property from the tax rolls for the 1998 tax year. As a result, respondent issued tax bills totaling $126,552.84 for the 1998 tax year. Petitioner notified respondent of the error, but respondent informed petitioner that the time for changing an assessment had expired.

Petitioner filed a petition with the MTT asserting that the inclusion of the property on respondent's tax rolls constituted a clerical error. Petitioner sought correction of the error pursuant to MCL 211.53a, which provides that a taxpayer who is assessed and pays taxes in excess of the correct amount due as the result of "a clerical error or mutual mistake of fact" is entitled to recover the excess paid if suit is commenced within three years of the date of payment. Petitioner did not contend that the assessment was made pursuant to an incorrect rate or that a mathematical error occurred in the computation of the assessment. Petitioner's position

was that no assessment should have been made in the first instance. Petitioner requested that the MTT: declare the property exempt from taxes based on the ordinance, declare respondent's tax bills for the 1998 tax year null and void, and order petitioner to pay a PILOT in the amount of $18,322.20.[1]

The MTT sua sponte dismissed the petition on the ground that it did not invoke the Tribunal's subject matter jurisdiction because it was filed more than thirty days after the issuance of the tax bills for the 1998 tax year. MCL 205.735(2). The MTT relied on *International Place Apartments-IV v Ypsilanti Twp*, 216 Mich App 104, 109; 548 NW2d 668 (1996), in which another panel of this Court held that MCL 211.53b allows for correction of a clerical error of a typographical or transcriptional nature. The MTT found that the error in this case, the inclusion of petitioner's property on the tax rolls, was not clerical in nature.

Petitioner and respondent filed a joint motion for reconsideration, arguing that *International Place*, *supra*, was inapplicable for the reason that it interpreted and applied MCL 211.53b rather than MCL 211.53a. The parties contended that the error in this case resulted in the inadvertent and incorrect placement of the property on respondent's tax rolls for 1998, and thus was the type of error eligible for correction under MCL 211.53a[2] The parties also contended that petitioner was entitled to equitable relief pursuant to *Spoon-Shacket Co v Oakland County*, 356 Mich 151, 168; 97 NW2d 25 (1959). The MTT denied the parties' motion, emphasizing that *International Place*, *supra*, held that MCL 211.53b did not allow for reappraisals even if the root of the error was a ministerial mistake.

We review a decision of the MTT to determine whether the MTT erred as a matter of law or adopted an erroneous legal principle. We accept the MTT's factual findings as final if those findings are "supported by competent, material, and substantial evidence on the whole record." *Danse Corp v Madison Heights*, 466 Mich 175, 178; 644 NW2d 721 (2002) (citations omitted).

Petitioner argues that the MTT erred by dismissing its petition because the type of error committed in this case is the type of error that MCL 211.53a was designed to correct. Petitioner asserts that because the term "clerical error" is not qualified in MCL 211.53a, as it is in MCL 211.53b, it must be construed in accordance with its common law meaning. *Farrell v Auto Club of Michigan*, 148 Mich App 165, 169; 383 NW2d 623 (1986). The common definition of "clerical error" includes an error or omission by a clerk, i.e., a ministerial mistake. Black's Law Dictionary (6th ed).

We disagree and affirm the MTT's decision. Petitioner's assertion that MCL 211.53a is more expansive in scope than MCL 211.53b is without merit. In *Wolverine Steel Co v Detroit*, 45 Mich App 671, 674; 207 NW2d 194 (1973), another panel of this Court held that an error in

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[1] Nothing on the record before this Court indicates that petitioner paid the tax bill. Furthermore, nothing on the record indicates that the property was included on respondent's tax rolls in later years.

[2] Respondent did not join in petitioner's request for relief (as stated in the original petition), but sought a status conference to discuss the matter. Apparently, the MTT issued its decision before a status conference could occur.

determining the application of the United States Constitution to the tax laws of Michigan was not the type of mistake of fact contemplated by MCL 211.53a. The *Wolverine* Court examined the relationship between MCL 211.53a and MCL 211.53b and observed that the statutes were *in pari materia* and should be construed together. *Wolverine, supra* at 674. The *Wolverine* Court noted that MCL 211.53b listed errors in assessment, application of the proper tax rate, and mathematics as the types of errors or mistakes with which it was intended to deal, and concluded that those were the types of errors or mistakes contemplated by MCL 211.53a. *Wolverine, supra* at 676.

The *International Place* Court concluded that while MCL 211.53b allowed for correction of clerical errors of a "typographical or transpositional nature," the statute did not permit reappraisal or reevaluation in cases in which the assessor failed to consider all relevant data, "even if the root of the assessor's error may have been a ministerial mistake such as the misfiling of a document." *International Place, supra*.

Here, the source of the error, i.e., the inclusion of petitioner's property on respondent's tax rolls and the assessment of petitioner's property under applicable tax rates, was a ministerial mistake. The MTT correctly held that this is not the type of clerical error that MCL 211.53a and MCL 211.53b were designed to correct. *Wolverine*, *supra*; *International Place*, *supra*. Petitioner's reliance on *Spoon-Shacket Co*, *supra*, is misplaced under the circumstances because that case was decided under common-law equity principles rather than on the statutes at issue in this case. *International Place*, *supra* at 108.

Affirmed.

/s/ David H. Sawyer
/s/ Patrick M. Meter
/s/ Bill Schuette